IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.860 OF 2004

The Greater Mumbai Milk Scheme ..Petitioner.
Vs.
Smt. Mariambi Ebrahim Hajoo ..Respondent.

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Ms. Imam Calcuttawala, AGP for the Petitioner.
Mr. O.P. Kutty with Mr. S.M. Shetty for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

15th September, 2006.

P.C. :

1. This Petition has been instituted before the Court by the Greater Mumbai Milk Scheme which is an organisation of the Government of Maharashtra. The Dispute relates to the gratuity dues of the husband of the Respondent. The employee concerned, Ibrahim Dawood Hajoo was working as a welder under the Greater Mumbai Milk Scheme. The employee in this case retired on 31st August, 1991. During the course of his employment, he was allotted government quarters being Quarter No.D/7, Worli Dairy Quarters, Worli, Mumbai 400 018. Under the

applicable rules the employee was required to vacate the quarters within three months from the date of retirement. The employee, however, continued to occupy the quarters even thereafter. The employee expired on 31st January, 1995. An amount of Rs.35,640/- was sanctioned as gratuity by the Accountant General, Pay & Accounts Office, Mumbai on 2nd July, 1999 under the Maharashtra Civil Services (Pension) Rules, 1982. After the order was received by the Petitioner on 12th August, 1999, the Respondent was called upon to collect the amount of gratuity payable to her husband by communications dated 25th January, 2000, 3rd July, 2000 and 8th December, 2000. It has been stated that since the employee was a government servant and was covered by the Maharashtra Civil Services (Pension) Rules, 1982 he was paid his other dues such as GPF, GIS and pension under those rules. Family Pension has accordingly been released to the Respondent. The total dues on account of gratuity were computed in accordance with Rule 111(1) under which a government servant who has completed five years qualifying service and has become eligible for service, gratuity and pension is to be granted on his

retirement gratuity equal to one-fourth of his pay for each completed six monthly period of qualifying service, subject to a maximum of 16 and half times the pay. The qualifying service of the employee in the present case was computed at 33 years. There were 66 completed six monthly periods of qualifying service. The last drawn basic pay was Rs.2,160/- and accordingly the gratuity computed was Rs.35,640/-.

2. Under Rule 132 of the Pension Rules the amount due from a retired government servant is required to be ascertained and fixed by the Head of the Office and to be adjusted against the gratuity amount due and payable. The expression "government dues" is defined by sub rule (3) of Rule 132 to include dues pertaining to Government accommodation including arrears of licence fee. The amount of gratuity was adjusted against an amount of Rs.88,692/- due to be recovered on account of retention of government accommodation beyond the date of retirement and a communication dated 11th August, 2003 was addressed to the Respondent.

3. The Respondent filed an application under the Payment of Gratuity Act, 1972 before the Controlling Authority. The Petitioner filed a written statement. The Controlling Authority by its order dated 19th April, 2001 directed the Petitioner to pay the gratuity calculated on the basis of the last drawn wages computed as the basic pay and the dearness allowance. Simple Interest at the rate of 10% per annum from the date of retirement has been allowed.

4. On behalf of the Petitioner, it has been submitted that the Payment of Gratuity Act, 1972 ex facie has no application having regard to the definition of the expression 'employee' in Section 2 (e) thereof. In the circumstances, it was urged that the Controlling Authority had no jurisdiction to entertain the application filed by the Respondent. Section 4(1) of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,- (a) on his superannuation, or

(b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. The expression 'employee is defined by Section 2(e) as follows :

> "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity]."

The definition of the expression 'employee' therefore clearly excludes any person who holds a post under the Central or State Government and is governed by any other Act or by any Rules providing for the payment of gratuity. It has not been disputed before the Court that the deceased employee during the course of his service held a post under the State. The Greater Mumbai Milk Scheme is run as a Department of the State. The only submission that was urged was that the Maharashtra Civil Services (Pension) Rules 1982 could not have applied to the employee in the present

case who had joined service prior to the enforcement of the Rules. There is no merit in the submission. Upon the enforcement of the rules, the rules would uniformly apply to all employees who are in service as on that date and those who join service thereafter. Rule 2 of the Pension Rules specifies that except where it is otherwise expressed or implied, the rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra is competent to prescribe. The deceased employee was not an employee within the meaning of Section 2(e) of the Payment of Gratuity Act, 1972 since he held a post under the State Government and was governed by the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. The Controlling Authority whose jurisdiction is circumscribed by Section 8 could not have exercised jurisdiction in the matter in respect of the claim for gratuity of an employee who was not governed by the Payment of Gratuity Act, 1972. The impugned order of the Controlling Authority will therefore have to be quashed and set aside and is accordingly quashed and set aside.

5. While disposing of this Petition, it is, however, clarified that having regard to the parameters of the issue which has arisen before the Court, it has not been necessary for this Court to express any view in regard to the correctness of the deduction that has been made from the amount of gratuity due and payable in respect of the deceased employee. The Respondent would be at liberty to independently espouse such remedy as is available in law, if she is aggrieved by any of the deductions so made. The Petition is allowed in the aforesaid terms. There shall be no order as to costs.